

MONTANA LEGISLATIVE HISTORY

Chapter 463 19 81

Bill H _____ S 107

Original bill & history ☒ C

H. Committee on Taxation

Hearing Date(s) 3-13 _____ C

3-20 _____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Taxation

Hearing Date(s) 1-22 _____ C

2-19 _____ C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

INVEST IN...

INTRODUCED: 1/12

REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 1/12

HEARING: 1/28

REPORT: 1/28, DO PASS

2ND READING: 1/30, DO PASS

3RD READING: 2/2, YEAS: 50

TRANSMITTED TO HOUSE: 2/2

REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 2/3

HEARING: 3/6

REPORT: 3/6, BE CONCURRED IN

2ND READING: 3/9, YEAS: 69; NAYS: 4

3RD READING: 3/11, YEAS: 89; NAYS: 5

RETURNED TO SENATE: 3/11

TRANSMITTED TO GOVERNOR: 3/16/81

ACTION: 3/19, SIGNED

CHAPTER 93

SB 107 -- MCCALLUM -- ALLOWING TAXPAYERS TO PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY OF LEVIES, ETC...

INTRODUCED: 1/12

REFERRED TO COMMITTEE ON TAXATION: 1/12

HEARING: 1/22

REPORT: 2/19, DO PASS AS AMENDED

2ND READING: 2/21, DO PASS

3RD READING: 2/24, YEAS: 50

TRANSMITTED TO HOUSE: 2/24

REFERRED TO COMMITTEE ON TAXATION: 3/2

HEARING: 3/13

REPORT: 3/20, BE CONCURRED IN, AS AMENDED

2ND READING: 3/28, YEAS: 82; NAYS: 0

3RD READING: 3/31, YEAS: 98; NAYS: 0

RETURNED TO SENATE WITH AMENDMENTS: 3/31

2ND READING: 4/9, BE CONCURRED IN

3RD READING: 4/11, YEAS: 47; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/16/81

ACTION: 4/21, SIGNED

CHAPTER 463

SB 108 -- STORY -- AMENDING 85-2-224 TO SPECIFICALLY INCLUDE MULTIPLE USES WITHIN A STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS.

FISCAL NOTE: REQUIRED

INTRODUCED: 1/13

REFERRED TO COMMITTEE ON AGRICULTURE: 1/13

HEARING: 1/19

REPORT: 1/21, DO NOT PASS YEAS: 36; NAYS: 9 -- KILLED

SB 109 -- STORY -- AMENDING THE LOBBYIST DISCLOSURE INITIATIVE TO CLARIFY ITS APPLICATION TO STATE AND LOCAL GOVERNMENT LOBBYING ACTIVITIES...

FISCAL NOTE: REQUIRED

INTRODUCED: 1/13

REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/13

HEARING: 1/27

SENATE BILL NO. 107

INTRODUCED BY McCALLUM

IN THE SENATE

January 12, 1981	Introduced and referred to Committee on Taxation.
February 19, 1981	Committee recommend bill do pass as amended. Report adopted.
February 20, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading, do pass.
February 23, 1981	Correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Taxation.
March 23, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in as amended. Ayes, 98; Noes, 0.

IN THE SENATE

April 1, 1981	Returned from House with amendments.
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April 3, 1981

Second reading, pass consideration.

April 4, 1981

On motion, consideration be passed for the day.

April 9, 1981

Second reading, amendments concurred in.

April 11, 1981

Third reading, amendments concurred in. Ayes, 47; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 Spate BILL NO. 102
2 INTRODUCED BY McCallister
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW TAXPAYERS TO
5 PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY
6 OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT
7 OF PAYMENT OF TAXES UNDER PROTEST; PROVIDING FOR RELIEF TO
8 ALL AFFECTED TAXPAYERS IF THE CHALLENGED LEVY IS DECLARED
9 ILLEGAL; AND AMENDING SECTIONS 15-1-401, 15-1-402, AND
10 15-1-404, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 NEW SECTION. Section 1. Alternative remedy. (1) In
14 lieu of proceeding under 15-1-401 or 15-1-402, an aggrieved
15 taxpayer who has paid a contested tax may, without having
16 first paid such tax under protest, bring a declaratory
17 judgment action in the district court which seeks a
18 declaration that a tax levied by the state or one of its
19 subdivisions was illegally or unlawfully imposed.

20 (2) If the district court determines that such tax was
21 illegally or unlawfully imposed, the judgment may direct
22 that the revenues collected under the illegal levy be either
23 directly refunded to all taxpayers who have paid the illegal
24 levy or used to eliminate a similar levy in the ensuing tax
25 year.

1 (3) A taxpayer who successfully brings a proceeding
2 under subsection (1) is entitled to attorney fees and costs.

3 Section 2. Section 15-1-401, MCA, is amended to read:
4 "15-1-401. Payment of license fees under protest --
5 action to recover. (1) Whenever any license fee or tax is
6 demanded of any person for the use and benefit of the state
7 of Montana and the same is considered unlawful by the person
8 from whom the same is demanded, such person may proceed
9 under [section 1] or may pay the same, or so much thereof as
10 may be considered unlawful, under written protest,
11 specifying the grounds of protest, to the state agency or
12 officer responsible for collecting the license fee or tax.

13 (2) The person paying or his legal representative may
14 bring an action in a court of competent jurisdiction against
15 the state agency or officer responsible for collecting the
16 license fee or tax to recover the same, without interest.
17 Any action instituted to recover any license fee or tax paid
18 under protest must be commenced and summons and copy of
19 complaint served within 60 days after the date of payment
20 thereof to the state agency or officer responsible for
21 collecting the license fee or tax. If such action is decided
22 adversely to the state, the state treasurer shall, upon
23 receiving a copy of the final judgment in such action,
24 refund such license fee or tax to the person in whose favor
25 such judgment is rendered."

Section 3. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest -- action to recover. (1) In all cases of levy of taxes, licenses, or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed or from whom such tax or license is demanded or enforced, such party ~~may~~ proceed under [section 1] or may, before such tax or license becomes delinquent, pay under written protest such portions of such tax or license deemed unlawful to the officers designated and authorized to collect the same, specifying the grounds of protest. Thereupon the party so paying or his legal representatives may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid or against the county or municipality in whose behalf the same was collected and the department of revenue. Both the officers to whom the license fee or tax was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with summons and complaint within the time prescribed. Any action instituted to recover any such portions of license or tax paid under protest shall be commenced and summons served within 90 days after the date of payment of the same. When any such license or tax is payable in installments, the first installment portion of such tax or license as may be deemed unlawful may be paid

under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment portion paid under protest, then such subsequent installment portion deemed unlawful may also be paid under written protest and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or any part thereof refunded to him. All such portions of licenses and taxes when so paid under protest shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any suit or action to recover the same. Nothing contained herein prohibits the investment of the moneys of this fund in the state unified investment program. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(2) If no action is commenced within the time herein

1 specified or if such action be commenced and finally
2 determined in favor of the county or municipality or
3 treasurer thereof, the amount of such protested portions of
4 the license or tax shall be taken from such protest fund and
5 deposited to the credit of the fund or funds to which the
6 same property belongs, but if such action is finally
7 determined adversely to such county or municipality or the
8 treasurer thereof, then the treasurer shall, upon receiving
9 a certified copy of the final judgment in said action,
10 refund to the person in whose favor such judgment is
11 rendered the amount of such protested portions of the
12 license or tax, with costs of suit and interest at the rate
13 currently paid on short-term interest-bearing time deposits
14 in banks in the county or 5% a year, whichever is greater,
15 from the date of payment under protest. If such action was
16 commenced for the purpose of recovering the first
17 installment portions of any such license or tax and any
18 subsequent installment thereof has been paid under protest
19 as herein provided, then the county treasurer shall, at the
20 time of refunding the amount of such first installment
21 required by such judgment, also refund such portion of any
22 subsequent installment as the person holding such judgment
23 is entitled to recover, together with interest thereon at
24 the rate of 6% a year from the date of payment under
25 protest."

1 Section 4. Section 15-1-404, MCA, is amended to read:
2 "15-1-404. Other remedies superseded. The remedy
3 ~~remedies~~ hereby provided shall supersede the remedy of
4 injunction and all other remedies which might be invoked to
5 prevent the collection of taxes or licenses alleged to be
6 irregularly levied or demanded, except in unusual cases
7 where the ~~remedy~~ ~~remedies~~ hereby provided ~~is~~ ~~are~~ deemed by
8 the court to be inadequate."

9 Section 5. Codification instruction. Section 1 is
10 intended to be codified as an integral part of Title 15,
11 chapter 1, part 4, and the provisions of Title 15, chapter
12 1, part 4, apply to section 1.

13 Section 6. Effective date. This act is effective on
14 July 1, 1981.

-End-

SENATE BILLS

COMMITTEE ON TAXATION

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
42	1-05-81	1-21-81				3-04-81			
44	1-05-81	3-23-81		3-23-81					
47	1-05-81	1-16-81		1-30-81					
53	1-05-81	1-14-81			2-19-81				
54	1-05-81	1-14-81				1-14-81			
55	1-05-81	1-14-81		1-14-81					
61	1-05-81	Withdrawn by author							
77	1-09-81	1-23-81				1-30-81			
85	1-12-81	1-21-81				2-11-81			
96	1-12-81	1-22-81				3-09-81			
98	1-12-81	1-23-81		2-09-81					
102	1-12-81	1-26-81				3-09-81			
107	1-12-81	1-22-81				2-19-81			
122	1-15-81	1-28-81				1-28-81			
126	1-15-81	1-26-81		3-21-81					
130	1-15-81	1-26-81	Tabled	3-25-81					

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

January 22, 1981

The tenth meeting of the committee was called to order at 8:00 a.m. by Chairman Pat Goodover in Room 415 of the State Capitol Building.

ROLL CALL: All members were present, except Sen. Ochsner, and Senators Eck and McCallum who were excused.

CONSIDERATION OF SENATE BILL 96: Sen. Fred Van Valkenburg, District 50, said this is an act that would amend the law on SID's to provide an additional option to cities to fund the required revolving fund account. The revolving fund has been required by statute since 1929 to provide a method of covering delinquencies which might arise in payment of SID's. The fund is available to act as a loan to the SID's. It has become necessary over the years because local governments find it almost impossible to sell SID bonds without a revolving fund. The law now provides that it be funded by one of two options: 1) loans from the general fund of the city and 2) a general levy of all taxpayers within the taxing entity to provide up to 5% of the then outstanding bonds. This bill proposes an additional option to fund the RF by collecting up to 5% of the bonds that are sought to be issued from the people seeking to create a new SID. He felt this was important because those people are the ones who are creating the obligation and he felt they, rather than the general taxpayer, should bear the cost.

PROPONENTS: Mae Nan Ellingson, Missoula Deputy City Attnorney, presented testimony which is incorporated into these minutes as Attachment #1.

Bill Verwolf, City of Helena, agreed that this proposal transfers the responsibility for providing the security for SID bonds to the newly developed areas, through the developers, rather than general property taxpayers. He felt it also allowed this to be accomplished under the tax-exempt interest structure to assist the development.

Bruce MacKenzie, General Counsel and Vice-President of D. A. Davidson, supports bill's concept. He said the revolving fund is an extremely important source of security for SID's.

Al Thelen, City of Billings, said that because every development that comes before a city is not the same, he sees this bill as giving other options to create more equity. His testimony is incorporated as Attachment #2.

John Evans, City of Bozeman County Commissioners, presented a commission resolution which is incorporated as Attachment #.

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Scott Currey, Montana Association of Realtors, would like to see an amendment to the effect that money in the revolving fund be eventually returned to land owners.

There were no opponents to this bill and questions and comments were called for from the committee.

Senator Van Valkenburg responded to Mr. Currey's amendment proposal saying he had no strong objection to it other than he thought it might be a bookkeeping nightmare with respect to returning the money 15 years later.

Sen. Towe to Mae Nan: What is average size of SID? She answered it varies from \$30,000 to \$900,000. Al Thelen's guess was an average of \$350,000. Sen. Towe asked what became of money if the revolving fund built up larger than necessary. Mae Nan said there is a state law that provides the money can be returned to the general fund. Sen. Elliott wondered if there was anything preventing the cities from requesting the developer to deposit into the revolving fund. Mae Nan replied Missoula has no specific statute authority that would allow this, but none that would deny it either. Sen. Crippen asked Mr. Thelen whether cities that don't have the 5% are obligated to take one of these options when a developer comes in and wants to improve the land. Mr. Thelen said developer would come in and have option to make the improvement or create SID's. Until 1978, if they chose to use SID method the revolving fund was funded by general taxing of people in the community. He said some developers prefer to go with private financing so payments can be spread over 30 years. He said he didn't like the proposed amendment because some small cities don't want to use this and they should have an option.

The hearing was closed on Senate Bill 96.

CONSIDERATION OF SENATE BILL 107: Because sponsor, Sen. McCallum, was ill, the Chairman announced that Dennis Burr would present the bill for him.

Dennis Burr said SB 107 is an attempt to deal with an appeal problem. He said the only method a taxpayer has for protest is paying the tax under protest and then within 90 days bringing an action in district court. He said the situation has arisen where a unit of state government has applied an illegal levy, subsequently challenged, but that there is no way to challenge before the tax is collected. For the general taxpayer who doesn't have large resources the effort of recovering the taxes is more problem than the amount of the tax. SB 107 says that if an action is brought in district court first, it can be brought before the taxes so that the levy may be challenged prior to payment. It expands district court powers and helps them with the two options mentioned above.

There were no proponents. Larry Weinberg, Dept. of Revenue, spoke as an opponent to the bill. He felt the Declaratory Judgment Act could be used and achieve the same end that the bill proposes. He

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saw problems with the bill as presented: 1) if a tax that may have been shown as a credit on income tax were thrown out, it could affect the federal return, and 2) if it is actually an action after the taxes are paid, but without protest, that money is gone. If court ordered money to be refunded to an entire class, that would present problems for any government. He saw the bill as providing legal advice for the prevailing party and says the UDJA provides costs the court considers fair. The DOR prefers that method because 1) not all suits to strike taxes are brought in good faith, and 2) if a taxpayer challenges a 55-mill levy as unconstitutional and the court decides that 2 mills were bad but 53 were fine, how would cost be divided then. He felt if remedies are specified, one is bound by the remedies. He summed up by saying he feels the law is all right as it is.

Dan Mizner, Montana League of Cities and Towns, was concerned where the money would come from to pay fees. He felt local governments have to have a concern about lawsuits brought against them and would like to have things cleared up.

Keith Anderson thought the levies in question would be above the statutory levies provided by law.

Mr. Burr agreed that the bill as drafted doesn't speak to challenging a levy before the tax is paid and thinks there should be a better method for challenge. He went on to say he thought there might be technical problems with the bill but said they're interested in allowing district courts to have options on how to dispose of illegal levies.

Mr. Weinberg said that in the Declaratory Judgment Act there's a section that talks about summary relief. He suggested a subsection specifically about taxpayer suits providing direction to the court for considering options. He offered to work on such a subsection. He saw another option as going to the tax law and putting in a provision that when an action is brought under the DJA, the options would be available. His objection is that a few parties could speak for many and he thinks the present law sufficient. He went on to say that there are circumstances where courts can give preventive relief.

Sen. Steve Brown said he thought we're after a law that finds a way to repay taxpayers and to give courts flexibility within confines of a particular situation. Larry Weinberg had an additional comment about coordination. He said if a court declared something illegal 1 year and the next year declared it legal, the taxpayer would catch it both ways.

Mr. Mizner said he would like language drafted so that counties can interpret what they can and cannot do.

The Chairman announced he would hold the bill until Sen. McCallum returns. The meeting was declared adjourned.


PAT M. GOODOVER, CHAIRMAN

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 19, 1981

The 31st meeting of the committee was called to order at 7:30 a.m. in Room 415 of the State Capitol Building, Chairman Pat Goodover presiding.

ROLL CALL: All members were present.

The first order of business was executive action on Senate Bill 461. The main problems are how to issue more licenses to areas who need them and still keep value on present licenses. Also, floater language needs clarification.

There was discussion of amendment language. Sen. Norman made a motion that 30% be changed to 33% on page 4, line 10. The motion passed with Sen. Towe dissenting. Sen. Manley made a motion to delete paragraph (c) in its entirety on page 5, line 3. The motion carried with Senators B. Brown and Towe dissenting. Sen. McCallum moved to strike section 2 in its entirety and renumber. The vote was unanimously in favor of this motion. Senator Severson moved the bill be given a DO PASS, as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 361:

"AN ACT TO EXEMPT DOMESTIC INTERNATIONAL SALES CORPORATIONS FROM THE CORPORATE LICENSE TAX; AND TO TAX THE SHAREHOLDERS OF DOMESTIC INTERNATIONAL SALES CORPORATIONS; AMENDING SECTIONS 15-30-111 AND 15-31-102, MCA."

Sen. Lee said the bill allows a corporation doing business in Montana, if they elect to be a DISC, to utilize this on their state corporate income tax. This gives businesses opting to operate in Montana the same footing they would have in other states. At this time the bill would affect very few businesses in the state, but this would be an incentive to entice some businesses to Montana. Bordering Canada would pave the way where warehousing might be possible here. He felt a DISC program would allow them to continue to service their accounts that are already in existence and not be penalized.

PROPOSERS:

Janelle Fallon, Montana Chamber of Commerce; Sen. Goodover, who felt that we have examples of DISC-type industries in the state and removing the tax would allow more competition; Sen. Dorothy Eck who said we ought to start shifting corporation tax from corporations to the shareholders.

There were no opponents, so questions were called from the committee.

12

DISPOSITION OF SENATE BILL 53:

Sen. Norman moved that SB 53 be given a DO NOT PASS. The vote was in favor of the motion with Senators Elliott and Crippen dissenting.

DISPOSITION OF SENATE BILL 17:

Amendments to SB 17 were approved on the 30th of January, but the subcommittee didn't address Sen. Crippen's concern about payment under protest.

Sen. Towe said he would like to see it made clear that if you do take an appeal to STAB and the appeal is pending when tax time comes the appeal is enough so that you won't have to pay second half taxes. He requested that Cort address that. The question arose about large taxpayers who might protest--say Burlington Northern and Montana Power Company. Dennis Burr felt they would be keeping revenue that would be held by the local governing body earning interest. Cort was asked to draft a simple amendment saying that in the event an appeal of the tax is before STAB at the time of the normal payment date that the tax need not be paid under protest provided once a final decision is made, after all appeals, the tax must be paid with interest as provided.

DISPOSITION OF SENATE BILL 210:

Amendment language was discussed. SB 210 is similar to 107 except the remedy is different. Sen. Towe moved SB 210 be given a DO PASS, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 6:

Sen. Towe moved that SB 6 be tabled. The motion passed unanimously.

DISPOSITION OF SENATE BILL 20:

Sen. Towe said at the courtesy of the chairman of the committee this bill was not reported out of committee until the committee liquor bill could be drafted. Sen. Towe moved to reconsider action taken on SB 20 on Jan. 27 and subsequent to that motion, moved to table it. The motion carried with Senators Manley and Goodover dissenting.

DISCUSSION OF SENATE BILL 183:

Discussion revealed that there was a problem with application so Sen. Towe and Cort were going to look this bill over today and come up with something tomorrow.

DISPOSITION OF SENATE BILL 107:

A motion was made that SB 107 be given a DO PASS, as amended. The vote was unanimously in favor of the motion.

The meeting adjourned at 10:00 a.m.

Patty Goodover

STANDING COMMITTEE REPORT

February 19

1981

MR. ~~XXXXXXXX~~ PRESIDENT:

We, your committee on Taxation

having had under consideration Senate Bill No. 107

Respectfully report as follows: That Senate Bill No. 107
be amended, as follows:

1. Page 1, line 13.

Following: line 12

Strike: lines 13 through 25 in their entirety.

2. Page 2, line 1.

Following: page 1

Strike: lines 1 and 2 on page 2.

3. Page 2

Following: line 2

Insert: "NEW SECTION. Section 1. Alternative remedy. (1) An aggrieved taxpayer may, in lieu of proceeding under 15-1-401 or 15-1-402, bring a declaratory judgment action in the district court seeking a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

~~XXXX~~
DO PASS

(CONTINUED)

Pat M. Goodover,

Chairman.

(2) The action must be brought within 90 days of the imposition of the tax. The court shall consolidate all actions brought under subsection (1) which challenge the same tax levy. The decision of the court shall apply to all similarly situated taxpayers except those taxpayers who are excluded under [section 7].

NEW SECTION. Section 2. Procedure. (1) Except as provided in subsection (2), an action pursuant to [section 1] is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under [section 1] may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23, or

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under [section 1] may elect to give notice as provided in this subsection. A party so electing must publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice shall advise each similarly situated taxpayer that:

(i) the court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he desires, enter an appearance.

(b) an election to give notice under this subsection does not prevent any party to the action from serving process on other interested parties

(4) In a proceeding under [section 1] all issues shall be tried by the court.

NEW SECTION. Section 3. Remedy. If the district court determines that the tax was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax, the judgment may direct:

(a) that the revenue collected under the illegal tax be directly refunded to the taxpayers who have paid the illegal tax and who have not been excluded from the action;

(b) that the revenue collected under the illegal tax be used to reduce a similar levy in the ensuing tax year; or

(c) such other remedy as the court considers appropriate.

NEW SECTION. Section 4. Tax to be paid. The taxes that are being challenged under [section 1] must be paid when due as a condition of continuing the action."

Renumber subsequent sections.

4. Page 6, line 9.
Following: "Section 1"
Insert: "through 4"

5. Page 6, line 12.
Following: "section 1"
Insert: "through 4"

And, as so amended,
DO PASS

SENATE BILL NO. 107
INTRODUCED BY McCALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW TAXPAYERS TO PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT OF PAYMENT OF TAXES UNDER PROTEST; PROVIDING FOR RELIEF TO ALL AFFECTED TAXPAYERS IF THE CHALLENGED LEVY IS DECLARED ILLEGAL; AND AMENDING SECTIONS 15-1-401, 15-1-402, AND 15-1-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Alternative remedy. (1) In lieu of proceeding under 15-1-401 or 15-1-402, an aggrieved taxpayer who has paid a contested tax may, without having first paid such tax under protest, bring a declaratory judgment action in the district court which seeks a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed.~~

~~(2) If the district court determines that such tax was illegally or unlawfully imposed, the judgment may direct that the revenues collected under the illegal levy be either directly refunded to all taxpayers who have paid the illegal levy or used to eliminate a similar levy in the ensuing tax years.~~

~~(3) A taxpayer who successfully brings a proceeding under subsection (1) is entitled to attorney fees and costs.~~
NEW SECTION. SECTION 1. ALTERNATIVE REMEDY. (1) AN AGGRIEVED TAXPAYER MAY, IN LIEU OF PROCEEDING UNDER 15-1-401 OR 15-1-402, BRING A DECLARATORY JUDGMENT ACTION IN THE DISTRICT COURT SEEKING A DECLARATION THAT A TAX LEVIED BY THE STATE OR ONE OF ITS SUBDIVISIONS WAS ILLEGALLY OR UNLAWFULLY IMPOSED OR EXCEEDED THE TAXING AUTHORITY OF THE ENTITY IMPOSING THE TAX.

(2) THE ACTION MUST BE BROUGHT WITHIN 90 DAYS OF THE IMPOSITION OF THE TAX. THE COURT SHALL CONSOLIDATE ALL ACTIONS BROUGHT UNDER SUBSECTION (1) WHICH CHALLENGE THE SAME TAX LEVY. THE DECISION OF THE COURT SHALL APPLY TO ALL SIMILARLY SITUATED TAXPAYERS EXCEPT THOSE TAXPAYERS WHO ARE EXCLUDED UNDER [SECTION 7].

NEW SECTION. SECTION 2. PROCEDURE. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), AN ACTION PURSUANT TO [SECTION 1] IS SUBJECT TO THE PROVISIONS OF TITLE 27, CHAPTER 8.

(2) IN LIEU OF THE REQUIREMENT OF 27-8-301, A PARTY BRINGING AN ACTION UNDER [SECTION 1] MAY ELECT TO USE:

(A) THE PROCEDURES AVAILABLE UNDER THE MONTANA RULES OF CIVIL PROCEDURE FOR BRINGING A CLASS ACTION, TITLE 25, CHAPTER 20, RULE 23; OR

(B) THE PROCEDURE PROVIDED FOR IN SUBSECTION (3).

(3) (A) A PARTY BRINGING AN ACTION UNDER [SECTION 1]

MAY ELECT TO GIVE NOTICE AS PROVIDED IN THIS SUBSECTION. A PARTY SO ELECTING MUST PUBLISH NOTICE THAT AN ACTION HAS BEEN BROUGHT. THE NOTICE MUST BE PUBLISHED AT LEAST ONCE EACH WEEK FOR 4 CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION PUBLISHED IN THE COUNTY WHERE THE ACTION IS COMMENCED AND IN OTHER COUNTIES WITHIN THE JURISDICTION OF THE TAXING AUTHORITY. THE NOTICE SHALL ADVISE EACH SIMILARLY SITUATED TAXPAYER THAT:

(I) THE COURT WILL EXCLUDE HIM FROM THE CLASS IF HE SO REQUESTS BY A SPECIFIC DATE;

(II) THE JUDGMENT, WHETHER FAVORABLE OR NOT, WILL INCLUDE ALL SIMILARLY SITUATED TAXPAYERS WHO DO NOT REQUEST TO BE EXCLUDED; AND

(III) ANY SIMILARLY SITUATED TAXPAYER WHO DOES NOT REQUEST EXCLUSION MAY, IF HE DESIRES, ENTER AN APPEARANCE.

(B) AN ELECTION TO GIVE NOTICE UNDER THIS SUBSECTION DOES NOT PREVENT ANY PARTY TO THE ACTION FROM SERVING PROCESS ON OTHER INTERESTED PARTIES.

(4) IN A PROCEEDING UNDER [SECTION 1] ALL ISSUES SHALL BE TRIED BY THE COURT.

NEW SECTION. SECTION 3. REMEDY. IF THE DISTRICT COURT DETERMINES THAT THE TAX WAS ILLEGALLY OR UNLAWFULLY IMPOSED OR EXCEEDED THE TAXING AUTHORITY OF THE ENTITY IMPOSING THE TAX, THE JUDGMENT MAY DIRECT:

(1) THAT THE REVENUE COLLECTED UNDER THE ILLEGAL TAX

BE DIRECTLY REFUNDED TO THE TAXPAYERS WHO HAVE PAID THE ILLEGAL TAX AND WHO HAVE NOT BEEN EXCLUDED FROM THE ACTION;

(2) THAT THE REVENUE COLLECTED UNDER THE ILLEGAL TAX BE USED TO REDUCE A SIMILAR LEVY IN THE ENSUING TAX YEAR; OR

(3) SUCH OTHER REMEDY AS THE COURT CONSIDERS APPROPRIATE.

NEW SECTION. SECTION 4. TAX TO BE PAID. THE TAXES THAT ARE BEING CHALLENGED UNDER [SECTION 1] MUST BE PAID WHEN DUE AS A CONDITION OF CONTINUING THE ACTION.

Section 5. Section 15-1-401, MCA, is amended to read:

"15-1-401. Payment of license fees under protest -- action to recover. (1) Whenever any license fee or tax is demanded of any person for the use and benefit of the state of Montana and the same is considered unlawful by the person from whom the same is demanded, such person may proceed under [section 1] or may pay the same, or so much thereof as may be considered unlawful, under written protest, specifying the grounds of protest, to the state agency or officer responsible for collecting the license fee or tax.

(2) The person paying or his legal representative may bring an action in a court of competent jurisdiction against the state agency or officer responsible for collecting the license fee or tax to recover the same, without interest. Any action instituted to recover any license fee or tax paid under protest must be commenced and summons and copy of

1 complaint served within 60 days after the date of payment
2 thereof to the state agency or officer responsible for
3 collecting the license fee or tax. If such action is decided
4 adversely to the state, the state treasurer shall, upon
5 receiving a copy of the final judgment in such action,
6 refund such license fee or tax to the person in whose favor
7 such judgment is rendered."

8 Section 6. Section 15-1-402, MCA, is amended to read:

9 "15-1-402. Payment of taxes under protest -- action to
10 recover. (1) In all cases of levy of taxes, licenses, or
11 other demands for public revenue which are deemed unlawful
12 by the party whose property is thus taxed or from whom such
13 tax or license is demanded or enforced, such party may
14 proceed under [section 1] or may, before such tax or license
15 becomes delinquent, pay under written protest such portions
16 of such tax or license deemed unlawful to the officers
17 designated and authorized to collect the same, specifying
18 the grounds of protest. Thereupon the party so paying or his
19 legal representatives may bring an action in any court of
20 competent jurisdiction against the officers to whom said
21 license or tax was paid or against the county or
22 municipality in whose behalf the same was collected and the
23 department of revenue. Both the officers to whom the license
24 fee or tax was paid or the county or municipality in whose
25 behalf the same was collected and the department of revenue

1 must be served with summons and complaint within the time
2 prescribed. Any action instituted to recover any such
3 portions of license or tax paid under protest shall be
4 commenced and summons served within 90 days after the date
5 of payment of the same. When any such license or tax is
6 payable in installments, the first installment portion of
7 such tax or license as may be deemed unlawful may be paid
8 under written protest and suit commenced and summons served
9 to recover the same within the time herein prescribed, and
10 if any subsequent installment of such license or tax shall
11 become due or payable before the final determination of the
12 suit commenced to recover the first installment portion paid
13 under protest, then such subsequent installment portion
14 deemed unlawful may also be paid under written protest and
15 no suit or action need be commenced to recover the same, but
16 the determination of the suit or action commenced to recover
17 the first installment portion paid under protest shall
18 determine the right of the party paying such subsequent
19 installment to have the same or any part thereof refunded to
20 him. All such portions of licenses and taxes when so paid
21 under protest shall be deposited by the treasurer of the
22 county or municipality to the credit of a special fund to be
23 designated as protest fund and shall be invested in
24 interest-bearing deposits in local banks or savings and loan
25 associations and retained in such protest fund until the

1 final determination of any suit or action to recover the
2 same. Nothing contained herein prohibits the investment of
3 the moneys of this fund in the state unified investment
4 program. The provision creating the special protest fund
5 does not apply to any payments made under protest directly
6 to the state.

7 (2) If no action is commenced within the time herein
8 specified or if such action be commenced and finally
9 determined in favor of the county or municipality or
10 treasurer thereof, the amount of such protested portions of
11 the license or tax shall be taken from such protest fund and
12 deposited to the credit of the fund or funds to which the
13 same property belongs, but if such action is finally
14 determined adversely to such county or municipality or the
15 treasurer thereof, then the treasurer shall, upon receiving
16 a certified copy of the final judgment in said action,
17 refund to the person in whose favor such judgment is
18 rendered the amount of such protested portions of the
19 license or tax, with costs of suit and interest at the rate
20 currently paid on short-term interest-bearing time deposits
21 in banks in the county or 5% a year, whichever is greater,
22 from the date of payment under protest. If such action was
23 commenced for the purpose of recovering the first
24 installment portions of any such license or tax and any
25 subsequent installment thereof has been paid under protest

1 as herein provided, then the county treasurer shall, at the
2 time of refunding the amount of such first installment
3 required by such judgment, also refund such portion of any
4 subsequent installment as the person holding such judgment
5 is entitled to recover, together with interest thereon at
6 the rate of 6% a year from the date of payment under
7 protest."

8 Section 7. Section 15-1-404, MCA, is amended to read:

9 "15-1-404. Other remedies superseded. The remedy
10 remedies hereby provided shall supersede the remedy of
11 injunction and all other remedies which might be invoked to
12 prevent the collection of taxes or licenses alleged to be
13 irregularly levied or demanded, except in unusual cases
14 where the remedy remedies hereby provided ~~is~~ are deemed by
15 the court to be inadequate."

16 Section 8. Codification instruction. Section SECTIONS
17 1 ~~is~~ THROUGH 4 ARE intended to be codified as an integral
18 part of Title 15, chapter 1, part 4, and the provisions of
19 Title 15, chapter 1, part 4, apply to section SECTIONS 1
20 THROUGH 4.

21 Section 9. Effective date. This act is effective on
22 July 1, 1981.

-End-

March, 1981

7th Legislature

TAXATION HEARINGS

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	2	3 HB's 807 804	4 SB 30	5 SB's 54, 55, 3	6 SB's 341, 34	
	9 SB's 163, 41	10 HB 499 SB's 10, 284	11 SB's 134, 183, 279, 231	12 HB 791 SB's 207, 208	13 SB's 210, 269, 107, 17	
	16 SB's 19, 77, 140	17 SB's 160, 255, 483 HJR 52	18 SJR 10 SB's 77, 377 HB's 609, 834	19 HB 835 SB 192	20 HB 844	
	23 SB's 292, 361 HB 842	24 HB 707	25	26 SB's 102, 457 322, 42 HB 852	27	
	30 HJR 57, 61 HB 859	31 HB 862				

HOUSE TAXATION COMMITTEE MEETING MINUTES
March 13, 1981

A meeting of the House Taxation Committee was held on Friday, March 13, 1981 at 8:00 a.m. in Room 102 of the State Capitol. All members were present except Rep. Vinger, who was absent. SENATE BILLS 17, 107, 269, and 210 were heard and EXECUTIVE ACTION was taken on SENATE BILLS 79, 183, 134 and 231.

The first bill to be heard was SENATE BILL 269, sponsored by Sen. Max Conover. He described the bill, which deals with eminent domain; see written testimony Exhibit "A." He suggested that the language on P. 5 might need amending.

Steve Doherty then testified in support of the bill on behalf of the Northern Plains Resource Council; see Exhibit "B."

Jon Rappe, Northern Tier Pipeline Committee, then testified. They are in favor of the bill because: (1) private land owners are impacted the most by energy development, and this is especially the case with the Northern Tier Pipeline. The private land owner is defenseless against the big pipeline. Regarding how terms and conditions are dictated by pipeline companies, it would be useful to compare what they are offering private land owners and what the federal government is allowing them. With Northern Tier, private land owners are being told that the company wishes to have a 75-foot permanent right-of-way; the payments for the easement will be in lump sum, and the easement is in perpetuity. The federal government is allowing Northern Tier only a 54-foot right-of-way, and is talking about annual payments and also is talking about easement for only 30 years. This illustrates some of the problems land owners are faced with. If the State in granting the power of eminent domain to companies like Northern Tier doesn't continue to take responsibility for how the money is granted, it is time the State starts giving the land owners tools to take care of the situation themselves. Right now, the State isn't doing the protecting of the land.

Mons Teigen, Montana Stockgrowers and the Montana CowBelles, then testified. They think it is about time the land owner gets some tools to assist him in dealing with the eminent domain authority.

Paul Smith, an attorney from Missoula, then rose in support of the bill. Right now, the land owner is at a disadvantage. He felt the situation should be more equitable; this bill will help solve some of the problems.

Beate Galda, an attorney for the Highway Department, then rose as an OPPONENT to SB 269; see written testimony Exhibit "C." The Department of Highways opposes the bill because it is not workable.

John Sullivan, MDU and Mountain Bell, then rose in opposition to the measure. They are opposed to the portion of the bill that would overturn the tradition of paying market value for easements, with the value being derived at the time of the purchase of the easement.

recognize the loss of value on the property. As far as case law, the depreciation of the remainder of the property has to be considered. The problem is not with the current fair market value, it is with the value of the use. It was pointed out that P. 5 line 24 provides for another method of valuing, but it isn't specified, and wouldn't tie in with the current fair market value provisions.

Rep. Switzer wanted to know if lack of future use was considered when determining value. He was told that in determining the value of whatever real estate, essential fair market value consists of whatever interference with the land owner's property rights there is. That would be considered in the condemnation proceedings.

Sen. Conover said that in his mind, the weed control part of the bill is the most important.

Paul Smith said the bill was providing a different method for paying for easements. Regarding the threat that there was going to be a fee simple to a ranch, he thought the value would be very high and they probably wouldn't do this. He felt this was an idle threat.

Rep. Brand wanted to know if the language on Line 25 would preclude landowners from going through the courts with this kind of thing, as they had previously. Mr. Smith said that if they exercise that option, the Court would have to honor it.

Sen. Conover said the bill was asking to put this land back to its natural grasses in addition to proper payment.

Sen. Conover then closed, He is not opposed to the power lines, etc., because that is progress, and it is needed, but fair market value has never had a true definition. Regarding leases, when they cross any government-owned land, it isn't sold to them; they pay rental on it every year to the federal government. Therefore, regarding the worries about yearly payments, this is done already, if they cross federal ground. The hearing on SB 269 was then closed.

SENATE BILL 107, sponsored by Sen. George McCallum, was then heard. This bill provides that if there is a levy that is illegal, the person can go to Court and ask for relief. Other people who may not feel they have the funds to go to Court are protected. In the past, people who protested their taxes had one year; the ones who appealed received the relief and the ones who didn't didn't get any relief. The bill provides that the Court can have the government apply the money toward the next year's levy, or whatever else is desired can be done.

Dennis Burr, Montana Taxpayers Association, then rose in support of the bill. This bill was originally drafted by the Taxpayers Association. P. 5, Section 6 is the current law on how a person can challenge a mill levy. The person has to wait until the tax is paid under protest; then he can go to Court and try to recover the tax. There is no

provision in present law to make the relief available to every one who paid the illegal levy. The Superintendent of Public Instruction's 1-mill levy was declared illegal, but only Keith Anderson, plaintiff in the suit, will get his taxes back, and no one else will. However, there is an agreement with the Office of Public Instruction that the money will be used against a future mill levy. If the Court determines the levy is illegal, it can refund taxes, hold the taxes for future levies, or whatever else would be workable. Presently, there are no remedies in the law for the District Court to apply other than returning the money to the person bringing the lawsuit.

Ellen Feaver, Director of the Department of Revenue, then rose in support of the bill.

There were no OPPONENTS to the bill. Questions were asked. Rep. Williams asked Mr. Burr how many times there had been cases in Montana of illegal levies. Mr. Burr said it occurred very often. The Tax-payers Association and some of the major companies audit the levies put on by local government. If it is too late to take the levy off the books, a gentlemen's agreement is made to hold the money and use it for the future; this bill would formalize this practice.

Rep. Williams wanted to know what the actual definition of an illegal levy was. Mr. Burr said that if more is levied than what was authorized, or if the voters authorize "X" sum of money and more is levied, this would constitute an illegal levy.

Sen McCallum then closed, and the hearing on SENATE BILL 107 was closed.

SENATE BILL 17, sponsored by Sen. Bill Thomas, was then heard. This bill was the result of an interim study conducted by the Revenue Oversight Committee. See written testimony Exhibit "D." The Department of Revenue made some technical adjustments to the bill in the Senate Taxation Committee, and he felt the bill was now in good order.

Bob Raundal, State Tax Appeals Board, then rose in support of the bill. There are about 3,600 appeals now before the Board; mostly on the 34% issue and the rollback tax, whereby they have stayed the payment of the tax. This bill would give them the refund powers.

There were no OPPONENTS to the bill. Questions were asked. Rep. Williams asked Mr. Raundal, if this bill was passed, what effect it would have on SB 483 and HJR 52. He replied that he didn't see any.

Ellen Feaver said she didn't think this bill would have any impact on the 34% cases.

The sponsor then closed, and the hearing on SB 17 was closed. He submitted a publication entitled, "PAYMENT OF TAXES UNDER PROTEST," which had been published by the Legislative Council in November, 1980; see Bulky Testimony file.

VISITORS' REGISTER

HOUSE Taxation COMMITTEE

BILL SB 107
SPONSOR McCallum

Date 3/13/81

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE TAXATION COMMITTEE MEETING MINUTES
March 20, 1981

A meeting of the House Taxation Committee was held on Friday, March, 20, 1981 at 8:00 a.m. in Room 102 of the State Capitol. All members were present. HOUSE BILL 844 was heard and EXECUTIVE ACTION was taken on SENATE BILLS 107 and 210.

HOUSE BILL 844, sponsored by Rep. Joe Kanduch, was heard. He stated that other persons had wished to co-sponsor the bill, but he had wanted the bill to be known as the "Kanduch Replacement" bill. A Sales Tax Account is created under the bill. The balance of the Account is dedicated exclusively to and solely available for appropriations for funding Teachers Retirement, replacing the inventory tax, Police and Firemens' Retirement, 7 mills of the permissive levy, and replacing General Fund for the equivalent of the surtax income, etc. These funds are earmarked and are replaced. The tax is being distributed evenly among the people and the burden is taken off the low income people.

Keith Anderson, Montana Taxpayers Association, then spoke up in support of the bill; see Exhibit "A." He suggested that Section 39 be amended to better spell out the disposition of the funds. For example, Teachers Retirement, Social Security and PERS have increased sharply and the language needs to be clarified to eliminate them from the levy. He pointed out that nationwide, the sales tax meant a 9.1% increase in revenue for some States and even more for others; therefore, it is a stable source of revenue like other sales taxes presently being imposed in Montana.

Jim Murry, Montana State AFL-CIO, then rose in OPPOSITION to the bill; see Exhibit "B."

Joe Lamson, Montana Democratic Party, also rose in opposition to the bill. The Party is totally against a sales tax because it is regressive and hits the person least able to take up the burden.

Jim Jensen, Low Income Senior Citizens Advocacy, rose in opposition to the measure. Testimony that low income people will be subsidized by a sales tax he submitted was not true and never had been. He didn't see why the Montana Taxpayers Association supported the bill, and not other bills which had meaningful impacts on low income people. The bill is also anti-business. Small businessmen and women will be burdened with paperwork that is unfair because bigger businesses can do this on computer. They prefer that Montana lead the other States, and not follow them, in this issue.

Nadlean Jensen, Executive Director, AFSCME, rose in opposition to the bill.

Jerry Driscoll, a labor representative, then spoke. This tax would mean a financial loss for his people even taking into consideration other tax cuts that may be passed by the Legislature.

The meeting was then turned over to Rep. Sivertsen in order that Rep. Nordtvedt could testify against the bill. He was opposed to the bill

tax elimination and he said he was and Rep. Vinger agreed with the idea, and pointed out that in North Dakota this had worked very well.

Rep. Underdal submitted to Mr. Jensen that a property tax reduction would also help low income people. Mr. Jensen agreed, but didn't believe that the property tax was a progressive tax; therefore, they oppose the idea of property taxes on residences in general. If the property tax is replaced with sales tax a small portion of a bad tax will be replaced but with a large portion of another bad tax. Rep. Williams made some comments to Rep. Kanduch. During the last campaign, most people ran on the platform that no new taxes would be levied and surpluses would be refunded. Rep. Kanduch said he felt this followed that philosophy. In Anaconda, the tax base is being lost and he stressed that this bill set up a replacement tax.

Rep. Williams asked him if he thought all those people out of jobs in Anaconda could afford to pay a sales tax. Rep. Kanduch said he felt they could, if their property taxes were reduced.

Rep. Williams asked him if he had any data to substantiate that other States had reduced property taxes when a sales tax was instituted. Rep. Kanduch said there had never been a bill like his and he therefore couldn't answer the question.

The Committee members agreed to take the matter up in Executive Session.

Rep. Kanduch then closed. He asked, which tax is greater: the sales tax on a new car or the second year's taxes. He submitted that they almost double the second year and this was a good indication that a sales tax would be quite a bit lower. He submitted that the unions' testimony against the bill had been against a sales tax, and this bill provides for a replacement tax. Sales taxes in recent years have been reformed to eliminate the burden on the people who can't take it. The sales tax compliments income taxes and property taxes and can be written to bring about a better balanced, more progressive tax structure. One advantage of a sales tax is that it is a "pay as you go" tax and doesn't hit the taxpayer in a large lump sum. Every time one goes to the store he will be reminded that he is paying for the teachers and the firemen. He said that the only people paying taxes at present were property owners. He submitted that renters didn't pay the tax. Regarding ability to pay, if \$10,000 per year is being earned, more than \$200 would be paid in sales taxes, and this was equitable.

The hearing on HB 844 was then closed. Control of the meeting was relinquished to Rep. Nordtvedt and the Committee recessed for five minutes.

The Committee reconvened and went into EXECUTIVE SESSION. SENATE BILL 107 was considered. Amendments were distributed; see Exhibit "D." Mr. Oppedahl explained them. The amendments were basically technical in nature.

Rep. Bertelsen wanted to know under what conditions amendment No. 2

might apply. Rep. Nordtvedt said he assumed that if a taxpayer objected to the challenge and wanted to be excluded, the amendment would apply. Rep. Zabrocki pointed out that it might be a public official who didn't want to be attached to the protest.

Rep. Dozier pointed that Line 9, p. 2 might cover amendment No. 2 and Mr. Oppedahl agreed to research this. It was pointed out that the amendment added additional detail to the provision and possibly this wouldn't be necessary. Rep. Nordtvedt recommended that the amendment be eliminated.

Rep. Nordtvedt moved amendments No.1 and 3. Motion carried unanimously.

Rep. Nordtvedt then moved the bill; motion carried unanimously.

SENATE BILL 210 was then considered. Technical amendments were also distributed on the bill: see Exhibit "E." Mr. Oppedahl referred the Committee to Subsection 3 on P. 2. This provides for a notice but no direction to a Court and that is why the amendment was needed. He said that the other bill didn't direct the Court, either.

Rep. Nordtvedt moved the amendments to SB 210; motion carried unanimously.

Ellen Feaver, Director of the Department of Revenue, submitted that these two bills would have done away with the 34% issue if they had been law.

Rep. Neuman brought up the point that if there was a similar but weaker case, the taxpayer might want to be excluded from the other challenge. The taxpayer is put in the situation where he has to read all the legal notices in the newspaper in order to protect his options. He submitted that the taxpayer either had to be excluded or appear and if he didn't know about the suit, he would be out of luck in future actions.

Ms. Feaver said there was a specific provision that any taxpayer that would be significantly affected would be notified specially. Rep. Nordtvedt said that this wasn't a requirement and wanted to know what the safeguard of that provision would be.

Ms. Feaver said big businesses might oppose a small person's suit and unless one made sure that they were on his side in the claim, they might act against him.

Rep. Dozier questioned the constitutionality of the provision on P. 3, line 22.

Rep. Nordtvedt said this clause just said there was a limit to how retroactively one could challenge taxes. Otherwise, people would be challenging their ancestors' taxes. A line has to be drawn someplace.

Rep. Nordtvedt questioned if a taxpayer's maneuvering room to challenge his own situation was being undercut; if he was being forced to be too vigilant. Rep. Neuman said he thought this was the case. He submitted there might be a case where the Court would have to notify every taxpayer in the State that he might be affected.

Rep. Nordtvedt suggested that action on the bill be delayed and a letter be written to the Attorney General asking him for a complete statement on how the taxpayer's position and maneuvering room would be affected by the bill. Rep. Roth moved this. Rep. Dozier made a substitute motion that the bill be TABLED; motion carried unanimously.

SENATE BILL 107 was referred back to. A motion was made to reconsider action; motion carried unanimously.

Rep. Nordtvedt moved that Amendment No. 2 be added to the bill; motion carried, with Rep. Dozier opposed.

Rep. Nordtvedt stated that the bill dealt with a levy and he believed that this was something that equally affected everyone and therefore, Rep. Neuman's problem didn't apply to the bill.

Rep. Williams moved that SENATE BILL 107 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

The meeting was adjourned at 9:50 a.m.

Nordtvedt

Rep. Ken Nordtvedt, Chairman

da

SENATE BILL 107, third reading (blue), be amended as follows:

1. Page 2, line 15.

Following: "[SECTION]"

Strike: "7"

Insert: "2"

2. Page 3.

Following: line 15

Insert: "(b) The court shall exclude a taxpayer from an action brought pursuant to [section 1] if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice."

Reletter: subsequent subsection

3. Page 3, line 16.

Following: "UNDER"

Strike: "THIS SUBSECTION"

Insert: "subsection (3) of this section"

AND AS AMENDED
BE CONCURRED IN

Amendment to Senate Bill 210, Third Reading Copy

1. Page 3, line 9.

Following: line 8

Insert: "(b) The court shall exclude a taxpayer from an action brought pursuant to [section 1] if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice."

2. Page 3, line 9.

Following: line 8

Strike: "(B)"

Insert: "(c)"

Following: "UNDER"

Strike: "THIS SUBSECTION"

Insert: "subsection (3) of this section"

Patry Sordani

STANDING COMMITTEE REPORT

March 21, 1981

SPEAKER

MR.

TAXATION

We, your committee on

SENATE

Bill No. 107

having had under consideration

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW TAXPAYERS TO PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT OF PAYMENT OF TAXES UNDER PROTEST; PROVIDING FOR RELIEF TO ALL AFFECTED TAXPAYERS IF THE CHALLENGED LEVY IS DECLARED ILLEGAL; AND AMENDING SECTIONS 15-1-401, 15-1-402, AND 15-1-404, MCA."

Respectfully report as follows: That SENATE Bill No. 107.....
third reading (blue), be amended as follows:

1. Page 2, line 15.

Following: "SECTION"

Strike: "7"

Insert: "2"

2. Page 3.

Following: line 15

Insert: "(b) The court shall exclude a taxpayer from an action brought pursuant to [section 1] if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice."

Reletter: subsequent subsection

3. Page 3, line 16.

Following: "UNDER"

Strike: "THIS SUBSECTION"

Insert: "subsection (3) of this section"

DEPASS

AND AS AMENDED

BE CONCURRED IN

SENATE BILL NO. 107
INTRODUCED BY McCALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW TAXPAYERS TO PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT OF PAYMENT OF TAXES UNDER PROTEST; PROVIDING FOR RELIEF TO ALL AFFECTED TAXPAYERS IF THE CHALLENGED LEVY IS DECLARED ILLEGAL; AND AMENDING SECTIONS 15-1-401, 15-1-402, AND 15-1-404, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 15-1-401. Alternative remedy. (1) In lieu of proceeding under 15-1-401 or 15-1-402, an aggrieved taxpayer who has paid a contested tax may, without having first paid such tax under protest, bring a declaratory judgment action in the district court which seeks a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed.~~

~~(2) If the district court determines that such tax was illegally or unlawfully imposed, the judgment may direct that the revenues collected under the illegal levy be either directly refunded to all taxpayers who have paid the illegal levy or used to eliminate a similar levy in the ensuing tax year.~~

~~(3) A taxpayer who successfully brings a proceeding under subsection (1) is entitled to attorney fees and costs.~~

NEW SECTION. SECTION 1. ALTERNATIVE REMEDY. (1) AN AGGRIEVED TAXPAYER MAY, IN LIEU OF PROCEEDING UNDER 15-1-401 OR 15-1-402, BRING A DECLARATORY JUDGMENT ACTION IN THE DISTRICT COURT SEEKING A DECLARATION THAT A TAX LEVIED BY THE STATE OR ONE OF ITS SUBDIVISIONS WAS ILLEGALLY OR UNLAWFULLY IMPOSED OR EXCEEDED THE TAXING AUTHORITY OF THE ENTITY IMPOSING THE TAX.

(2) THE ACTION MUST BE BROUGHT WITHIN 90 DAYS OF THE IMPOSITION OF THE TAX. THE COURT SHALL CONSOLIDATE ALL ACTIONS BROUGHT UNDER SUBSECTION (1) WHICH CHALLENGE THE SAME TAX LEVY. THE DECISION OF THE COURT SHALL APPLY TO ALL SIMILARLY SITUATED TAXPAYERS EXCEPT THOSE TAXPAYERS WHO ARE EXCLUDED UNDER [SECTION 7 2].

NEW SECTION. SECTION 2. PROCEDURE. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), AN ACTION PURSUANT TO [SECTION 1] IS SUBJECT TO THE PROVISIONS OF TITLE 27, CHAPTER 8.

(2) IN LIEU OF THE REQUIREMENT OF 27-8-301, A PARTY BRINGING AN ACTION UNDER [SECTION 1] MAY ELECT TO USE:

(A) THE PROCEDURES AVAILABLE UNDER THE MONTANA RULES OF CIVIL PROCEDURE FOR BRINGING A CLASS ACTION, TITLE 25, CHAPTER 20, RULE 23; OR

(B) THE PROCEDURE PROVIDED FOR IN SUBSECTION (3).

(3) (A) A PARTY BRINGING AN ACTION UNDER [SECTION 1]

1 MAY ELECT TO GIVE NOTICE AS PROVIDED IN THIS SUBSECTION. A
 2 PARTY SO ELECTING MUST PUBLISH NOTICE THAT AN ACTION HAS
 3 BEEN BROUGHT. THE NOTICE MUST BE PUBLISHED AT LEAST ONCE
 4 EACH WEEK FOR 4 CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL
 5 CIRCULATION PUBLISHED IN THE COUNTY WHERE THE ACTION IS
 6 COMMENCED AND IN OTHER COUNTIES WITHIN THE JURISDICTION OF
 7 THE TAXING AUTHORITY. THE NOTICE SHALL ADVISE EACH SIMILARLY
 8 SITUATED TAXPAYER THAT:

9 (I) THE COURT WILL EXCLUDE HIM FROM THE CLASS IF HE SO
 10 REQUESTS BY A SPECIFIC DATE;

11 (II) THE JUDGMENT, WHETHER FAVORABLE OR NOT, WILL
 12 INCLUDE ALL SIMILARLY SITUATED TAXPAYERS WHO DO NOT REQUEST
 13 TO BE EXCLUDED; AND

14 (III) ANY SIMILARLY SITUATED TAXPAYER WHO DOES NOT
 15 REQUEST EXCLUSION MAY, IF HE DESIRES, ENTER AN APPEARANCE.

16 (B) THE COURT SHALL EXCLUDE A TAXPAYER FROM AN ACTION
 17 BROUGHT PURSUANT TO [SECTION 1] IF THE PERSON BRINGING THE
 18 ACTION PUBLISHES NOTICE AS PROVIDED IN SUBSECTION (3) OF
 19 THIS SECTION AND THE TAXPAYER REQUESTS TO BE EXCLUDED BY THE
 20 DATE SPECIFIED IN THE NOTICE.

21 (B)(C) AN ELECTION TO GIVE NOTICE UNDER THIS
 22 SUBSECTION SUBSECTION (3) OF THIS SECTION DOES NOT PREVENT
 23 ANY PARTY TO THE ACTION FROM SERVING PROCESS ON OTHER
 24 INTERESTED PARTIES.

25 (4) IN A PROCEEDING UNDER [SECTION 1] ALL ISSUES SHALL

1 BE TRIED BY THE COURT.

2 NEW SECTION. SECTION 3. REMEDY. IF THE DISTRICT
 3 COURT DETERMINES THAT THE TAX WAS ILLEGALLY OR UNLAWFULLY
 4 IMPOSED OR EXCEEDED THE TAXING AUTHORITY OF THE ENTITY
 5 IMPOSING THE TAX, THE JUDGMENT MAY DIRECT:

6 (1) THAT THE REVENUE COLLECTED UNDER THE ILLEGAL TAX
 7 BE DIRECTLY REFUNDED TO THE TAXPAYERS WHO HAVE PAID THE
 8 ILLEGAL TAX AND WHO HAVE NOT BEEN EXCLUDED FROM THE ACTION;

9 (2) THAT THE REVENUE COLLECTED UNDER THE ILLEGAL TAX
 10 BE USED TO REDUCE A SIMILAR LEVY IN THE ENSUING TAX YEAR; OR

11 (3) SUCH OTHER REMEDY AS THE COURT CONSIDERS
 12 APPROPRIATE.

13 NEW SECTION. SECTION 4. TAX TO BE PAID. THE TAXES
 14 THAT ARE BEING CHALLENGED UNDER [SECTION 1] MUST BE PAID
 15 WHEN DUE AS A CONDITION OF CONTINUING THE ACTION.

16 Section 5. Section 15-1-401, MCA, is amended to read:

17 "15-1-401. Payment of license fees under protest --
 18 action to recover. (1) Whenever any license fee or tax is
 19 demanded of any person for the use and benefit of the state
 20 of Montana and the same is considered unlawful by the person
 21 from whom the same is demanded, such person may proceed
 22 under [section 1] or may pay the same, or so much thereof as
 23 may be considered unlawful, under written protest,
 24 specifying the grounds of protest, to the state agency or
 25 officer responsible for collecting the license fee or tax.

1 (2) The person paying or his legal representative may
2 bring an action in a court of competent jurisdiction against
3 the state agency or officer responsible for collecting the
4 license fee or tax to recover the same, without interest.
5 Any action instituted to recover any license fee or tax paid
6 under protest must be commenced and summons and copy of
7 complaint served within 60 days after the date of payment
8 thereof to the state agency or officer responsible for
9 collecting the license fee or tax. If such action is decided
10 adversely to the state, the state treasurer shall, upon
11 receiving a copy of the final judgment in such action,
12 refund such license fee or tax to the person in whose favor
13 such judgment is rendered."

14 Section 6. Section 15-1-402, MCA, is amended to read:
15 "15-1-402. Payment of taxes under protest -- action to
16 recover. (1) In all cases of levy of taxes, licenses, or
17 other demands for public revenue which are deemed unlawful
18 by the party whose property is thus taxed or from whom such
19 tax or license is demanded or enforced, such party may
20 proceed under [section 1] or may, before such tax or license
21 becomes delinquent, pay under written protest such portions
22 of such tax or license deemed unlawful to the officers
23 designated and authorized to collect the same, specifying
24 the grounds of protest. Thereupon the party so paying or his
25 legal representatives may bring an action in any court of

1 competent jurisdiction against the officers to whom said
2 license or tax was paid or against the county or
3 municipality in whose behalf the same was collected and the
4 department of revenue. Both the officers to whom the license
5 fee or tax was paid or the county or municipality in whose
6 behalf the same was collected and the department of revenue
7 must be served with summons and complaint within the time
8 prescribed. Any action instituted to recover any such
9 portions of license or tax paid under protest shall be
10 commenced and summons served within 90 days after the date
11 of payment of the same. When any such license or tax is
12 payable in installments, the first installment portion of
13 such tax or license as may be deemed unlawful may be paid
14 under written protest and suit commenced and summons served
15 to recover the same within the time herein prescribed, and
16 if any subsequent installment of such license or tax shall
17 become due or payable before the final determination of the
18 suit commenced to recover the first installment portion paid
19 under protest, then such subsequent installment portion
20 deemed unlawful may also be paid under written protest and
21 no suit or action need be commenced to recover the same, but
22 the determination of the suit or action commenced to recover
23 the first installment portion paid under protest shall
24 determine the right of the party paying such subsequent
25 installment to have the same or any part thereof refunded to

1 him. All such portions of licenses and taxes when so paid
 2 under protest shall be deposited by the treasurer of the
 3 county or municipality to the credit of a special fund to be
 4 designated as protest fund and shall be invested in
 5 interest-bearing deposits in local banks or savings and loan
 6 associations and retained in such protest fund until the
 7 final determination of any suit or action to recover the
 8 same. Nothing contained herein prohibits the investment of
 9 the moneys of this fund in the state unified investment
 10 program. The provision creating the special protest fund
 11 does not apply to any payments made under protest directly
 12 to the state.

13 (2) If no action is commenced within the time herein
 14 specified or if such action be commenced and finally
 15 determined in favor of the county or municipality or
 16 treasurer thereof, the amount of such protested portions of
 17 the license or tax shall be taken from such protest fund and
 18 deposited to the credit of the fund or funds to which the
 19 same property belongs, but if such action is finally
 20 determined adversely to such county or municipality or the
 21 treasurer thereof, then the treasurer shall, upon receiving
 22 a certified copy of the final judgment in said action,
 23 refund to the person in whose favor such judgment is
 24 rendered the amount of such protested portions of the
 25 license or tax, with costs of suit and interest at the rate

1 currently paid on short-term interest-bearing time deposits
 2 in banks in the county or 5% a year, whichever is greater,
 3 from the date of payment under protest. If such action was
 4 commenced for the purpose of recovering the first
 5 installment portions of any such license or tax and any
 6 subsequent installment thereof has been paid under protest
 7 as herein provided, then the county treasurer shall, at the
 8 time of refunding the amount of such first installment
 9 required by such judgment, also refund such portion of any
 10 subsequent installment as the person holding such judgment
 11 is entitled to recover, together with interest thereon at
 12 the rate of 6% a year from the date of payment under
 13 protest."

14 Section 7. Section 15-1-404, MCA, is amended to read:
 15 "15-1-404. Other remedies superseded. The remedy
 16 remedies hereby provided shall supersede the remedy of
 17 injunction and all other remedies which might be invoked to
 18 prevent the collection of taxes or licenses alleged to be
 19 irregularly levied or demanded, except in unusual cases
 20 where the remedy remedies hereby provided is are deemed by
 21 the court to be inadequate."

22 Section 8. Codification instruction. Section SECTIONS
 23 1 is THROUGH 4 ARE intended to be codified as an integral
 24 part of Title 15, chapter 1, part 4, and the provisions of
 25 Title 15, chapter 1, part 4, apply to section SECTIONS 1

- 1 THROUGH 4.
- 2 Section 9. Effective date. This act is effective on
- 3 July 1, 1981.

-End-